

COUNTY OF YORK

2004

LEGISLATIVE PROGRAM



BOARD OF SUPERVISORS

James S. Burgett, Chairman

Thomas G. Shepperd, Jr., Vice Chairman

Sheila S. Noll

Donald E. Wiggins

Walter C. Zaremba

COUNTY ADMINISTRATOR

James O. McReynolds

COUNTY ATTORNEY

James E. Barnett

Prepared by the Office of the County Attorney

Introduction

The Board of Supervisors is pleased to commend this Legislative Program for consideration by the 2004 General Assembly. It was adopted and endorsed by the Board on October 7, 2003, by Resolution R03-163.

With the support of our legislators, I know that our County government will be improved and the quality of life for our citizens will be enhanced. If, during the course of the session, our legislators have questions concerning the position of the County on legislative matters, they are encouraged to contact James O. McReynolds, our County Administrator, at 890-3320, or James E. Barnett, our County Attorney, at 890-3340, who would be pleased to respond to any questions that you might have with regard to the legislation proposed.

James S. Burgett, Chairman
Board of Supervisors

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in the Board Room, York Hall, Yorktown, Virginia, on the 7th day of October, 2003:

Present

Vote

James S. Burgett, Chairman
Thomas G. Shepperd, Jr., Vice Chairman
Walter C. Zaremba, Vice Chairman
Donald E. Wiggins
Sheila S. Noll

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION APPROVING THE COUNTY'S 2004 LEGISLATIVE PROGRAM

WHEREAS, because of the applicability of Dillon's Rule in Virginia, York County is dependent upon the General Assembly to adopt specific enabling legislation in many instances in order to enable the County to provide efficient and effective services and government to its citizens; and

WHEREAS, the County has developed a Legislative Program for the consideration of the 2004 session of the General Assembly which outlines certain legislative policies which the Board believes ought to guide the General Assembly and proposes certain legislation that would benefit the County; and

WHEREAS, the Board has carefully considered its legislative program, and believes that it is in the best interests of the citizens of York County;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 7th day of October, 2003, that this Board hereby approves the County's 2004 Legislative Program, and commends it to the County's representatives in the General Assembly for action.

BE IT FURTHER RESOLVED that copies of this Resolution and the County's 2004 Legislative Program be forwarded to the County's elected representatives to the General Assembly.

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State Taxation, Local Government Revenues, and Cost Shifting

Of primary importance to York County are a number of issues bearing directly upon the ability of local governments to confront the fiscal burden they face in providing services that citizens have a right to expect of their local governments. Some of these issues relate directly to actions either undertaken in recent years by the General Assembly, or which are currently under consideration by state legislators. The County asks the General Assembly to adopt appropriate legislation to bolster the ability of local governments to increase their own fiscal stability. We noted with some alarm the number of bills submitted to the 2003 General Assembly which, in one manner or another, would have limited the ability of local governments to respond to the demands placed upon them, including several bills which would have placed limitations on increases in real estate tax increases, and HB 2735 which would have eliminated local license taxes. Any similar legislation introduced in 2004 should be defeated.

Simultaneously, York County asks that the General Assembly maintain the vital state and local partnership that exists in York County and throughout the Commonwealth, and:

- ◆ Recognize that local governments cannot absorb the state's budget deficit.
- ◆ Recognize that actions taken in recent years have downsized state services while increasing requirements and therefore cost for local governments.
- ◆ Maintain current state and local cost-sharing for important services and not shift greater costs to local levels of government through direct actions or through changes in regulations and procedures.
- ◆ Provide local governments with tools for directly generating revenues.
- ◆ Maintain the state's responsibility for assuring that adequate funding is provided to localities to effectively deliver mandated services.

Specifically, the York County Board of Supervisors makes the following requests:

➤ ***Support legislation to return 5% of the state's income tax revenues to localities.***

Over the last few years, several proposals for a return of designated portions of state tax revenues to localities have been supported by the Virginia Municipal League, the Virginia Association of Counties, and other groups representing the combined interests of

Virginia localities. To date, none of those proposals have been adopted. We ask the 2004 General Assembly to adopt appropriate legislation directing that 5% of all state income tax revenues shall be designated for direct unrestricted aid to local governments, to be distributed according to a formula based upon population figures. Any such legislation should simultaneously guarantee that the designation of a portion of state income tax revenues to localities will not be offset by reductions in other existing state revenue resources which support local government needs, or any reductions in local taxing authority.

➤ ***Reject the recommendations of the HJR 651 joint subcommittee for the establishment of a new statewide telecommunications tax.***

As required by HJR 651 adopted by the 2003 General Assembly, a joint subcommittee studying telecommunications taxes has adopted a proposal for a new statewide telecommunications tax which, among other things, would eliminate all local taxes on telecommunications companies. The new tax would replace all local consumer utility, gross receipts and E911 taxes, and cable franchise fees. York County currently derives a total of \$1,255,000 from all of the local taxes which are proposed to be replaced. Although the telecommunications industry contends that the proposal is revenue neutral in the aggregate, York County citizens will likely have their total tax burden increased while the revenue to the County will at best be the same as it is expected to be for Fiscal Year 2004, without a utility tax. This is because the County does not currently assess a utility tax on telephone services and the proposal is to implement such a tax on a state wide basis. We ask that you oppose the proposed statewide telecommunications tax.

➤ ***Restore the reductions in funding to the Virginia Juvenile Community Crime Control Act (VJCCCA) made by the 2002 General Assembly.***

The VJCCCA is the Commonwealth's funding stream for the state-local partnership that provides vital programs for youth before the courts and their families. The 2002 General Assembly reduced VJCCCA funding by 51%. In that session, SABRE funding, which had been used for substance abuse treatment and prevention for juveniles as well as for adults, was completely eliminated. This was a staggering reduction that has had a devastating effect on local juvenile justice and child welfare systems. In addition to the reduction of services and loss of extremely capable, seasoned and experienced staff, Virginia localities have experienced "unintended consequences" which include increased admissions to secure detention centers and commitments to state facilities; increased incidences of judges taking custody and ordering youths into foster care through the Department of Social Services; increases in the Comprehensive Services Act (CSA) costs due to increased numbers of foster care cases, which then become part of the mandated population and are automatically eligible for services paid through the CSA. In all

instances, costs in these areas accrue to the state government as well as to localities. We ask that the 2002 cuts be fully restored.

➤ ***Increase funding for the Statewide Transportation Revenue Sharing Program.***

The Transportation Revenue Sharing Program is a 50-50 matching program which allows the Commonwealth to double its transportation dollars by allowing counties needing specific highway improvements to commit non-state funding as a match. Given the limited transportation funding available, this seems to be a good leveraging of state assets and York County has made good use of this program. Some examples of recent County projects funded through this program, with the funding received in each case from the Commonwealth, are:

◆ Water Country Parkway relocation	\$302,100
◆ Rouchambeau widening	\$125,000
◆ Penniman Road Pavement Rehabilitation	\$114,000
◆ Route 17 pavement overlay	\$ 50,000
◆ Route 171 widening	\$ 25,000
◆ Grafton Drive/Burts Road connector	\$ 25,000
◆ Mansion Road repaving	\$ 6,000

The Revenue Sharing Program is currently funded at \$15 million annually, a figure which has not been increased for a number of years. We request that it be increased to \$20 million annually.

➤ ***Adopt enabling legislation to authorize counties to impose local taxes on cigarettes.***

Currently, Code of Virginia §§ 58.1-3830 through 3832 allow the imposition of local cigarette taxes only by Fairfax and Arlington Counties, and by those localities that imposed such a tax prior to January 1, 1977. Cities and towns, however, are generally granted authority to impose excise taxes on cigarettes pursuant to Code of Virginia § 58.1-3840. Consequently, this particular revenue opportunity is inexplicably granted to some, but not all, of Virginia's localities. As a matter of general tax policy, we believe that the taxing authorities of Virginia's various localities, whether they are cities, towns, or counties, ought to be equalized. Specifically with respect to the cigarette tax, we ask that the Code sections referenced above be appropriately amended to provide all counties with the authority to impose local taxes on the sale of cigarettes. Particularly in light of the current state budget fiscal crisis, we believe that local governments should be uniformly empowered throughout the state with any taxing authority which the General Assembly has heretofore deemed beneficial to bestow on some, but not all, of Virginia's localities.

➤ ***Fully fund the Commonwealth's Human Services needs.***

Attached as Exhibit 1 is a legislative analysis of a number of the state's human services needs. In many instances, the state has failed to maintain adequate funding of important services, some of which are discussed above. In other instances, we are concerned that the current fiscal crisis may threaten existing programs. We ask that you implement each of the recommendations contained in Exhibit 1.

Request Funding to Support Hampton Roads Planning District Commission Review of Data to be Provided to 2005 Base Realignment and Closure Commission

Congress has indicated that there will be another round of the Base Realignment and Closure Commission (BRAC) in 2005. The bases will complete data calls in calendar year 2003. These data calls will be an inventory of public and private infrastructure both on and off the various bases and will be key statistical data to be used in the BRAC process. Once the data calls are completed, the bases will be prohibited from communicating substantive information about the data calls with localities. During the last BRAC process, the Commonwealth appropriated \$200,000, which was matched by an additional \$200,000 from the Hampton Roads Planning District Commission (HRPDC). This money was used to hire a consulting firm to, among other things, review the accuracy of the data call information provided by the various Hampton Roads installations and to check the data call information from competing bases in other states. It is vitally important that the data calls and the other BRAC processes be as fair and objective as possible. Therefore it would be wise for the legislature to support the HRPDC efforts.

The General Assembly is requested to appropriate \$250,000, which will be matched by an equal amount from the HRPDC for the 2005 BRAC process. This money is needed to be appropriated as soon as possible so that the data call process can be monitored both within Hampton Roads and elsewhere. The failure of the 2003 General Assembly to appropriate funds for this purpose may already have hindered the region's ability to analyze the federal government's data. Although Hampton Roads has been very successful in diversifying its economy, we are still dependent for 20 percent of our gross regional product on the military. There is also a substantial secondary impact from the military because of the relatively high paying jobs that they provide throughout Hampton Roads.

Issues Related to Traffic Safety

➤ *Authorize a Demonstration Traffic Signal Photo-Monitoring System*

Virginia Code § 46.2-833.01 authorizes certain localities to provide by ordinance for the establishment of a demonstration program of installing traffic signal photo-monitoring systems at up to twenty-five intersections in each locality. Localities which have this authority are the Cities of Virginia Beach and Richmond, Fairfax County, and all counties, cities, and towns adjacent to Fairfax. The monitoring systems identify vehicles which run red lights, for example, and authorize their owners to be notified and fined by mail.

The 2000 General Assembly passed legislation (SB 414) which would have added York County and a number of other jurisdictions to the list of localities authorized to conduct photo-monitoring, but it was vetoed by Gov. Gilmore. Numerous bills were submitted in 2001 on behalf of localities seeking authority to install such systems, but all were either defeated, or vetoed by the Governor. Several such bills were introduced during the 2002 session, including SB 41, which passed in the Senate, but all were killed by the House Committee on Militia, Police and Public Safety. The 2003 General Assembly passed authorizing legislation in both the Senate (SB 840) and the House of Delegates (HB 1696). Both bills died in the House Committee on Militia, Police and Public Safety, the House Bill on a re-referral after having once been adopted by the full House.

The County's Transportation Safety Commission reports that this program has been successful everywhere it has been implemented. We request that legislation be introduced adding York County to those localities authorized by Virginia Code § 46.2-833.01 to have such a program. Attached as Exhibits 2 and 3 are copies of last year's HB 1696 and SB 840, either of which would accomplish that result.

➤ *Stiffen the penalties for driving while intoxicated.*

Currently, Code of Virginia § 18.2-270 and subsequent sections define the penalties for the offense of driving while intoxicated. Those provisions are detailed, and cannot quickly be summarized here. Briefly, however, a first offense constitutes a Class 1 misdemeanor, punishable by a fine of up to \$2,500, and/or imprisonment not to exceed one year, with an automatic suspension of the defendant's driver's license. All or part of the fine and imprisonment can be suspended, although there are certain minimal levels of fine or imprisonment which are assessed if blood alcohol levels are as high as 0.20. Upon a second offense committed within less than five years after a first offense, a mandatory minimum fine of \$500 is assessed, none of which can be suspended, and confinement in jail for at least one month, but not more than one year, of which only five

days of confinement is mandatory, and not subject to suspension by the court. For a second offense committed within five to 10 years of a first offense, the \$500 mandatory fine is imposed, but the requirement for a mandatory minimum sentence of five days incarceration is dropped. Again, additional penalties are prescribed for blood alcohol levels of at least 0.20. A commission of three DUI offenses within any 10 year period constitutes a Class 6 felony. Although driver's licenses are suspended for any DUI offense, judges may allow restricted use of a driver's license for such things as driving to and from work if the defendant enters a certified ASAP program (see Code of Virginia § 18.2-271.1 (E)). Given the severity of the impact of drunk driving on American society, we believe that the penalties should be increased such that:

- A driver convicted of his first offense would lose his license for a specified period of time, without exception, and without the possibility of driving under a restricted license.
- A driver convicted of a second offense should be sentenced to a jail term of not less than six months, such period to be mandatory, and lose his driver's license for a period of at least two years, again without exceptions and without the possibility of a restricted permit to drive.
- A third offense committed at any time should constitute a felony.

Local Regulatory Authority

- *Amend Code of Virginia § 46.2-1222 to authorize York County to adopt parking restrictions on specified classifications of vehicles (such as commercial vehicles) without having to seek the approval of the Commonwealth Transportation Board.*

Two statutes, Code of Virginia §§ 46.2-1222.1 and 46.2-1224, authorize certain counties designated either by population or form of government (but not including York County) to adopt parking regulations within residential areas applicable to certain categories of commercial vehicles, watercraft, boat trailers, motor homes, and camping trailers. York County has adopted its own restrictions on the parking of commercial vehicles within certain enumerated residential areas by virtue of Code of Virginia § 46.2-1222 (not set out in the Code of Virginia, but last modified in 1998 by virtue of HB 705). That statute allows the governing bodies of Fairfax, James City, Loudoun, Montgomery, Prince George, Prince William, and York Counties by ordinance, but only with the approval of the Commonwealth Transportation Board (CTB), to restrict or prohibit parking on any part of the state secondary system of highways within their boundaries and to provide for the classification of vehicles for the purpose of such restrictions and prohibitions. Although Code of Virginia § 46.2-1220 generally authorizes any locality to adopt parking restrictions and regulations, it does not expressly authorize any local government to restrict the parking only of identified classifications of vehicles such as commercial vehicles, boat trailers, mobile homes, and the like. Fortunately, to date, the County has been able to convince the CTB to allow the County not only to restrict the parking of oversized vehicles in certain designated subdivisions and residential areas, but also to apply those restrictions to a broader classification of vehicles than that which is found in any of the other statutes referenced above. A copy of that portion of the County's ordinance defining "commercial vehicles," "passenger carrying vehicles," and "recreational vehicles" for purposes of our parking restrictions is attached as Exhibit 4.

However, the requirement for seeking the approval of the CTB is clumsy and time consuming. Once the County Board of Supervisors has agreed (upon application of groups of citizens) to add another subdivision to its ordinance, it must first adopt an ordinance, submit the adopted ordinance to the Virginia Department of Transportation (VDOT) for review and forwarding to the CTB, along with VDOT's recommendation, for consideration and approval. The process takes months, and, of course, there is always the possibility that the CTB will disagree with the County. In our view, allowing the parking of oversized vehicles within some of the County's residential areas can pose significant safety hazards, blocking views of oncoming traffic and children and other pedestrians attempting to cross a busy, but narrow residential street. We feel that the authority to determine which residential areas are best suited for such parking restrictions should be made at the local level, and not by a state agency. Attached as Exhibit 5 is a proposed

amendment to Virginia Code § 46.2-1222 which strikes the words "with the approval of the Commonwealth Transportation Board." We ask that it be adopted.

- ***Amend Code of Virginia § 15.2-2307 to clarify that local governments have the authority to remove and abandon nonconforming signs at the owner's cost if the owner refuses to do so after reasonable notice.***

The 2003 General Assembly adopted HB 2473 which amended Code of Virginia § 15.2-2307 by adding language authorizing a locality, after making a reasonable attempt to notify the owner of an abandoned nonconforming sign, to "order the removal" of the sign. A sign was deemed to be abandoned if the business for which the sign had been erected had ceased operation for at least two years. Although it may have been the understanding of the General Assembly that it was authorizing local governments to remove any abandoned signs whose owner had ignored the removal order, the language added to the bill in 2003 does not actually contain any such authorizing language. Consequently, some local governments have been hesitant to take effective action against nonconforming abandoned signs where the owner either cannot be located or chooses to ignore a removal order. We ask the General Assembly to further amend Code of Virginia § 15.2-2307 to clarify that local governments have authority to remove such signs under the circumstances mentioned. A proposed revision to the statute is attached as Exhibit 6.

Removal of Public Officers

- *Amend Code of Virginia § 24.2-233 to allow removal of elected and certain appointed officers upon conviction of misdemeanor offenses for assault and battery and sexual misconduct against employees.*

Code of Virginia § 24.2-231 provides that any person holding any public office shall forfeit that office upon conviction of a felony, once all rights of appeal have been exhausted. However, as to misdemeanor offenses, Code of Virginia § 24.2-233 provides a relatively short list of offenses for which a public official may be removed from office, and then only upon petition to the local circuit court. Those misdemeanors include certain offenses related to the possession or distribution of controlled substances, and misdemeanors involving hate crimes. Apart from such offenses, an elected official can be removed from office by a circuit court only if neglect of duty, misuse of office, or incompetence can be shown to have had "a material adverse effect upon the conduct of the office." Several years ago, an elected official in York County was convicted of misdemeanor assault and battery, sexual battery, and indecent exposure offenses against one of his employees. However, the circuit court refused to remove the public official from his office when, following a trial on a petition for removal under Code of Virginia § 24.2-233, the judge determined that there had been no evidence that the day to day functioning of the officer's department had been materially adversely affected by virtue of the officer's conduct. Consequently, the officer was allowed to remain in office until time such as his next term of office expired, at which time he chose not to run for reelection. In our opinion, such conduct should have warranted a removal from office, if not automatically as in the case with felonies, then at least upon petition to the circuit court as would have been the case with possession of marijuana or drug paraphernalia, or a hate crime misdemeanor. Attached as Exhibit 7 is a proposed amendment to Code of Virginia § 24.2-233 which would add certain misdemeanor assault and battery and indecent exposure convictions to the list of offenses for which a public officer could be removed from office upon petition to the circuit court, without having to prove that the officer's public duties were adversely and materially affected by the misconduct. We ask that it be adopted.

Administration of the State's Judicial System

- *Restore the funding for substitute judges which was reduced by the 2003 General Assembly*

The 2003 General Assembly, in response to the state's current fiscal crisis, reduced funding for substitute judges to serve in the absence of the state's full term judges. Substitute judges sit in for regular judges not only during absences due to illness or vacations, but also when the regular judges attend mandatory judicial training, as they are periodically required to do as a condition of their office. The reduction in funding for state judges increases the likelihood that a judicial absence will result in a closed courtroom, causing delays of hearings and potentially having significant impact on citizens with matters awaiting the court's attention. We ask that the funding cuts made by the 2003 General Assembly be restored in full.

2003-04 Legislative Analysis

Human Services

Human Services are not only critical for the quality of life for the citizens of the Commonwealth, but some areas are rapidly becoming amongst the most costly expenditures for state and local governments. York County staff has identified the following areas as current Human Services Legislative concerns. Based upon recent trends and experiences during previous sessions of the General Assembly, the following issues should be considered as the County prepares for the coming session:

■ Mental Health:

Behavioral Health Care must be accomplished through both a state-wide, Commonwealth operated system and an adequately funded community based system of care.

Issue: **The Commonwealth should maintain, fully fund and continue to operate a Statewide Mental Health System, to include residential facilities for long-term care of adults and adolescents.**

Issue: **The Commonwealth should provide funding sufficient to allow Community Services Boards to adequately meet the charge of providing a community based system of care.**

During recent years there has been a continuing trend toward reorganization and downsizing of the State Mental Health care system. It is important to recognize that such downsizing has both a service and financial impact on localities.

- ◆ Current patients should not be released into the community without state funding sufficient to pay for service needs.
- ◆ The state presently pays for its institutions. After closing or significantly downsizing, there will no longer be any ability to hospitalize patients in a state facility. Localities should be very concerned about where those in need of psychiatric hospitalization will go in the future and who will be responsible for payments for that care.

All adolescent units have closed with the exception of Dejarnette, which is a short-term (6 weeks) diagnostic facility. This leaves the ever-increasing numbers of very seriously disturbed children no alternatives for residential care other than expensive private placements, usually cooperatively funded by state-local governments under the Comprehensive Services Act (CSA). In addition, there is an extremely high incidence of youth with mental health disorders in secure juvenile detention centers.

Some services are best run statewide. This is particularly true of a mental health system. The facilities should be used as residential care facilities but should be operated by the Commonwealth.

■ **Mental Health, Substance Abuse and the Criminal Justice System:**

Issue: **The absence of sufficient funding for community based care; prevention programs and adequate mental health inpatient treatment facilities has had a critical impact on the criminal justice system.**

Background

The Commonwealth assigns responsibilities for mental health care and substance abuse treatment to the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and through that agency to Community Service Boards (CSBs). During recent years there has been a continuing trend toward reorganization and downsizing of the State Mental Health care system.

Community based treatment programs are few and not adequately funded. For substance abuse prevention and treatment, the General Assembly completely eliminated SABRE funding in the 2002 session. Adult inpatient treatment facilities have been drastically downsized, returning patients to the community and greatly limiting access to inpatient treatment. With the exception of a short-term diagnostic center, all adolescent units have been closed, leaving ever-increasing numbers of very seriously disturbed children with no alternatives for inpatient treatment care other than expensive private placements, if at all.

Left untreated, mental health disorders and substance abuse frequently result in behaviors that bring individuals to the attention of law enforcement agencies and the Courts. Disturbed adults and juveniles are being found in increasing numbers in corrections facilities rather than mental health facilities. Community Service Boards have no resources to assign to secure facilities for treatment. Local corrections staff are becoming mental health and substance abuse services deliverers. Local governments are increasingly funding treatment professionals within adult jails and in secure and other residential juvenile facilities.

Conclusion: By default, corrections facilities are becoming mental health treatment centers.

Recommendations:

It is the responsibility of the Commonwealth to provide for behavioral health care in an appropriate mental health system not a corrections environment. The Commonwealth must assure the delivery of this care by operating a statewide system of inpatient treatment centers and by adequately funding a community based system of care.

- ◆ **The Commonwealth should maintain, fully fund and continue to operate a Statewide Mental Health System, to include inpatient treatment facilities for long-term care of adults and adolescents.**
- ◆ **The Commonwealth should provide funding sufficient to allow Community Services Boards to adequately meet the charge of providing a community based system of care.**

Additionally, the Commonwealth should:

- 1. Expand prevention services, care and coordination of after care. DMHMRSAS should reinstate juvenile inpatient mental health and substance abuse treatment facilities.**
- 2. Assure adequate access to inpatient care for the transfer of adult offenders from jails to mental health facilities.**
- 3. Provide increased level of funding to Community Services Boards for community-based care.**

■ Comprehensive Services Act (CSA)

Since 1992, state funds to support services for serious dysfunctional children and their families have been pooled in a single revenue stream and identified as the Comprehensive Services Act (CSA). These funds have a required local government match that can reach 45%. York's match is 38.888%. CSA has resulted in an increased administrative burden for localities. It has blurred lines of responsibility and fiscal accountability at the agency level, reducing the capacity to control costs. The difficulty in predicting necessary funding levels to support mandated services has creased significantly.

The General Assembly should:

- Maintain the distinction between mandated and non-mandated children to be served with CSA funds and keep service to non-mandated populations a local option.
- Recognize the high cost of residential treatment that has resulted from the closing of state run mental health facilities and the transfer of portions of the costs to local governments under the CSA.
- Maintain or reduce the 45% cap on local match.

- Recognize the intense administrative burdens on local governments that accompany the implementation of the CSA and increase the administrative reimbursement to localities.
- Remove the local match requirement for Medicaid that was imposed in 2000 in the CSA – in all other areas Medicaid is a state and federal funded program and the CSA is the only instance of required local government Medicaid match.

■ **Juvenile Justice System:**

➤ ***Restore the reductions in funding to the Virginia Juvenile Community Crime Control Act (VJCCCA) made by the 2002 General Assembly.***

The VJCCCA is the Commonwealth's funding stream for the State-Local Partnership that provides vital programs for youth before the courts and their families. The 2002 General Assembly reduced VJCCCA funding by 51%. In that session SABRE funding, which had been used for substance abuse treatment and prevention for juveniles as well as for adults, was completely eliminated. This was a staggering reduction that has had a devastating effect on local juvenile justice and child welfare systems.

In addition to the reduction of services and loss of extremely capable, seasoned and experienced staff, Virginia localities have experienced “unintended consequences” which include increased admissions to secure detention centers and commitments to state facilities; increased incidences of judges taking custody and ordering youths into foster care through the Department of Social Services; increases in the Comprehensive Services Act (CSA) costs due to increased numbers of foster care cases, which then become part of the mandated population and are automatically eligible for services paid through the CSA. In all instances, costs in these areas accrue to the state government as well as to localities. The 2002 cuts should be fully restored.

➤ ***Restore the Reductions in Juvenile Detention Funding made by the Administration and the General Assembly during 2002 and 2003.***

Secure detention centers for juvenile offenders are required for public safety purposes and are operated by local governments in conjunction with the Commonwealth. The Commonwealth is obligated to provide funding for operations and distributes those funds on a per bed basis. Over the two-year period funding was reduced by 23% . These reductions have had the effect of shifting significant portions of the State’s share of operations costs to the local partner.

In addition, a larger number of offenders who would otherwise be in state corrections centers are remaining in local facilities through the State’s increased emphasis on “community corrections”. This saves the State money while increasing costs to localities. Further, as previously noted, an increasing number of juvenile offenders should actually be in mental health facilities rather than detention centers.

■ **Aging and Health:**

- With the general aging of the population, adult homes and assisted living facilities are becoming increasingly important. The General Assembly should provide direction to the appropriate state agencies for implementation of comprehensive standards of care for adult homes and assisted living facilities.
- It has become increasingly difficult to secure Certified Nurse Aids (CNA). Residential facilities, hospitals and in-home care for the elderly depend on CNAs and a shortage will have serious impact on both the availability and cost of care. This is directly attributable to the very low prevailing wage rates, poor working conditions and, customarily, the absence of benefits. The Joint Commission on Health Care should study the State Medicaid Plan, various regulatory provisions and alternatives for potential incentives that would encourage this critical employment.
- As Virginia's population continues to age and health care costs rise, it becomes increasingly important that the Commonwealth have a sound and fiscally responsible plan for funding Medicaid as it is currently designed, as well as any future expansions of coverage that may become necessary.

Recognizing the increasingly significant impact Medicaid will continue to have on Virginia's finances, York County opposes any local match for Medicaid and shares the 2003 position taken by the Virginia Association of Counties (VACo) in opposing any attempt to transfer costs associated with funding Medicaid programs to localities.

HOUSE BILL NO. 1696

Offered January 8, 2003

Prefiled January 3, 2003

A BILL to amend and reenact § 46.2-833.01 of the Code of Virginia, relating to use of photo-monitoring systems to enforce traffic light signals.

Patrons-- McQuigg, Alexander, Almand, Barlow, Bland, Bolvin, Brink, Cosgrove, Crittenden, Kilgore, Lingamfelter, Marshall, R.G., Oder, Parrish, Petersen, Plum, Scott, Shuler, Van Landingham, Van Yahres and Watts; Senator: Colgan

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-833.01](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-833.01](#). (~~Effective until July 1, 2005.~~) Use of photo-monitoring systems to enforce traffic light signals; penalty.

A. ~~The~~ *Because of the advantages of photo-monitoring systems, including their efficient and safe means of enforcing red light laws, their potential to reduce violations and accidents caused by red light running and their ability to focus the public's attention on safe driving, the governing body of any county, city having a population of more than 390,000, any city having a population of at least 200,000 but less than 225,000, any county having the urban county executive form of government, any county adjacent to such county, and any city or town adjacent to or surrounded by such county except any county having the county executive form of government and the cities surrounded by such county, or town may, after holding a public hearing, provide by ordinance for the establishment of a demonstration traffic safety program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five25 intersections within each locality at any one time. No traffic light signal photo-monitoring systems shall be used for the sole purpose of generating revenue.*

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a ~~technician~~ law-enforcement officer employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a

violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation-monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces ~~two~~—2 or more photographs, ~~two~~—2 or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of §§ [46.2-833](#), [46.2-835](#), or § [46.2-836](#). For each such vehicle, at least ~~one~~ 1 recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection. *No traffic light signal violation photo-monitoring system shall record the image of a vehicle proceeding legally through an intersection unless the image appears incidental to the recorded image of a vehicle entering an intersection during the red phase of a signal.*

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed ~~fifty dollars~~ \$50 nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § [19.2-76.2](#). Notwithstanding the provisions of § [19.2-76](#), a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner, lessee, or renter of the vehicle as shown, in the case of vehicle owners, in the records of the Department of Motor Vehicles or, in the case of vehicle lessees or renters, in the records of the lessor or rentor. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection D of this section and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § [19.2-76.3](#). No

proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

H. In any action at law brought by any person or entity as the result of personal injury or death or damage to property, such evidence derived from a photo-monitoring system shall be admissible in the same method prescribed as required in the prosecution of an offense established under this section without the requirements of authentication as otherwise required by law.

I. On behalf of a locality, a private entity may not obtain records regarding the registered owners of vehicles which fail to comply with traffic light signals. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation-monitoring system or equipment, and all related support services, to include consulting, operations and administration. However, only ~~an employee~~ *a law-enforcement officer* of the locality may swear to or affirm the certificate required by subsection C.

J. ~~The provisions of this section shall expire on July 1, 2005~~ *When selecting intersections for a traffic light signal violation photo-monitoring system, a locality shall consider factors such as (i) the accident rate for the intersection, (ii) the rate of red light violations occurring at the intersection (number of violations per number of vehicles), (iii) the difficulty experienced by law-enforcement officers in patrol cars or on foot in apprehending violators, and (iv) the ability of law-enforcement officers to apprehend violators safely within a reasonable distance from the violation. Localities may consider the risk to pedestrians as a factor, if applicable.*

K. *Before the implementation of a traffic light signal photo-monitoring system at an intersection, the locality shall complete an engineering safety analysis that addresses signal timing and other location-specific safety features. The length of the yellow phase shall be established based on the recommended methodology of the Institute of Transportation Engineers. All photo-monitoring systems shall provide a minimum 0.3-second grace period between the time the signal turns red and the first violation is recorded. If recommended by the engineering safety analysis, the locality shall make reasonable location-specific safety improvements, including signs and pavement markings.*

L. *Any locality that uses a photo-monitoring system to enforce traffic light signals shall place conspicuous signs giving notice thereof at or near the boundary of the locality on all primary highways or within 500 feet of the intersection approach at which a photo-monitoring system is used. There shall be a rebuttable presumption that such signs were in place at the time of the commission of the traffic light signal violation.*

M. *Any locality that uses a photo-monitoring system to enforce traffic light signals shall evaluate the program at least annually. This evaluation shall include at a minimum a review of the monthly violation rates and a review of rear-end accidents and other accidents attributed to traffic light signal violations at the intersections equipped with cameras. Evaluation results shall be made available to the public.*

N. *Prior to or coincident with the implementation or expansion of such a system, a locality shall conduct a public awareness program, advising the public that the locality is implementing or expanding a traffic light signal photo-monitoring system.*

SENATE BILL NO. 840

Senate Amendments in [] -- January 21, 2003

A BILL to amend and reenact § 46.2-833.01 of the Code of Virginia, relating to use of photo-monitoring systems to enforce traffic light signals.

Patron Prior to Engrossment--Senator Quayle

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-833.01](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-833.01](#). (Effective until July 1, 2005) Use of photo-monitoring systems to enforce traffic light signals; penalty.

A. ~~The governing body of any city having a population of more than 390,000, any city having a population of at least 200,000 but less than 225,000, any county having the urban county executive form of government, any county adjacent to such county, and any city or town adjacent to or surrounded by such county except any county having the county executive form of government and the cities surrounded by such county, city, or town~~ may provide by ordinance for the establishment of a demonstration program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five intersections within each locality at any one time.

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a technician employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such

owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation-monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of §§ [46.2-833](#), [46.2-835](#), or § [46.2-836](#). For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed fifty dollars nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § [19.2-76.2](#). Notwithstanding the provisions of § [19.2-76](#), a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner, lessee, or renter of the vehicle as shown, in the case of vehicle owners, in the records of the Department of Motor Vehicles or, in the case of vehicle lessees or renters, in the records of the lessor or renter. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection D of this section and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § [19.2-76.3](#). No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

H. In any action at law brought by any person or entity as the result of personal injury or death or damage to property, such evidence derived from a photo-monitoring system shall be admissible in the same method prescribed as required in the prosecution of an offense established under this section without the requirements of authentication as otherwise required by law.

I. On behalf of a locality, a private entity may not obtain records regarding the registered owners of vehicles which fail to comply with traffic light signals. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation-

monitoring system or equipment, and all related support services, to include consulting, operations and administration. However, only an employee of the locality may swear to or affirm the certificate required by subsection C.

J. The provisions of this section shall expire on July 1, [~~2005~~ 2010] .

EXHIBIT 4

(2) Classification of Vehicles: For the purposes of this subsection, the classification of vehicles shall be as follows:

a. Commercial Vehicle:

1. Any vehicle with a gross vehicle weight of ten thousand (10,000) pounds or more, or a length of 21 feet or more, including trailers or other attachments;
2. Any vehicle, regardless of size, used in the transportation of hazardous materials as defined in section 103 of the federal Hazardous Materials Transportation Act (49 C.F.R. Part 172, Subpart F);
3. Any heavy construction equipment, whether located on the street or on a truck, trailer or semi-trailer;
4. Any solid waste collection vehicle, tractor truck or tractor truck/semi-trailer or tractor/truck combination, dump truck, concrete mixer truck, or towing or recovery vehicle;
5. Any trailer, semi-trailer or other vehicle in which food or beverages are stored or sold

b. Passenger Carrying Vehicle

1. Any vehicle designed to carry sixteen (16) or more passengers, including the driver.
2. Any vehicle licensed by this Commonwealth for use as a common or contract carrier or as a limousine.

c. Recreational Vehicle

A device, whether or not self-propelled, designed or used for transporting persons or property for or in connection with recreation, as distinguished from mere transportation, having a gross vehicle weight of ten thousand (10,000) pounds or more, or a length of 21 feet or more, including trailers or other attachments, and including such things as motor homes, travel trailers, campers, boats and boat trailers.

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-1222](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-1222](#). Regulations of parking on secondary highways by certain counties.

Notwithstanding any other provision of law, the governing bodies of Fairfax, James City, Loudoun, Montgomery, *Prince George*, Prince William, and York Counties by ordinance, ~~with the approval of the Commonwealth Transportation Board,~~ may (i) restrict or prohibit parking on any part of the state secondary system of highways within their respective boundaries, (ii) provide for the classification of vehicles for the purpose of these restrictions and prohibitions, and (iii) provide that the violation of the ordinance shall constitute a traffic infraction and prescribe penalties therefor.

All signs and other markings designating the areas where parking is prohibited or restricted shall be installed by the county at its expense under permit from the Virginia Department of Transportation.

In any prosecution charging a violation of the ordinance, proof that the vehicle described in the complaint, summons, or warrant was parked in violation of such ordinance, together with proof that the defendant was at the time the registered owner of the vehicle, as required by Chapter 6 of this title, shall give rise to a prima facie presumption that the registered owner of the vehicle was the person who committed the violation.

Any ordinance adopted pursuant to this section shall require (i) that uncontested payments of penalties for violations of the ordinance shall be collected and accounted for by a county officer or employee, (ii) that the officer or employee shall report on a proper form to the appropriate district court any person's contesting of any citation for violation of the ordinance, and (iii) that the officer or employee shall cause warrants to be issued for delinquent parking citations.

§ 15.2-2307. Vested rights not impaired; nonconforming uses.

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever they are enlarged, extended, reconstructed or structurally altered and may further provide that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to notify such property owner, from ordering the removal of a nonconforming sign that has been abandoned. In any case where the owner or an agent for the owner cannot be located with reasonable diligence, or where the sign has not been removed by the date which is 30 days following the giving of the notice, the locality may remove the sign and the owner shall be liable to the locality for the costs of removal and disposal, and such costs shall be a lien upon any real estate owned by the owner within the locality. The locality may record a notice of lien for such costs among the land records of the local circuit court. For purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least two years.

Nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

§ 24.2-233. Removal of elected and certain appointed officers by courts.

Upon petition, a circuit court may remove from office any elected officer or officer who has been appointed to fill an elective office, residing within the jurisdiction of the court:

1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office, or

2. Upon conviction of a misdemeanor pursuant to Article 1 (§ [18.2-247](#) et seq.) or Article 1.1 (§ [18.2-265.1](#) et seq.) of Chapter 7 of Title 18.2 and after all rights of appeal have terminated involving the:

a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or distribute a controlled substance or marijuana, or

b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug paraphernalia, or

c. Possession of any controlled substance or marijuana, and such conviction under a, b, or c has a material adverse effect upon the conduct of such office, or

3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a "hate crime" as that term is defined in § 52-8.5 when the conviction has a material adverse effect upon the conduct of such office.

4. Upon conviction, and after all rights of appeal have been terminated, of a misdemeanor for assault and battery pursuant to Code of Virginia § 18.2-57, sexual battery or an attempt to commit sexual battery pursuant to Code of Virginia § 18.2-67.4 or § 18.2-67.5, or indecent exposure pursuant to Code of Virginia § 18.2-387, where the victim or complaining witness was at the time of the offense employed by the officer, or employed in such capacity that the officer exercised or was authorized to exercise supervision over the victim's or complaining witness's employment.

The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to ten percent of the total number of votes cast at the last election for the office that the officer holds.

Any person removed from office under the provisions of subdivision 2 or 3 may not be subsequently subject to the provisions of this section for the same criminal offense.